

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ITV DIRECT, INC.,

Plaintiff,

v.

HEALTHY SOLUTIONS, LLC, et al.,

Defendants.

RELATED CASES

CIVIL ACTION NO. 04-CV-10421-JLT

**PLAINTIFF ITV DIRECT'S AND INTERVENOR-DEFENDANT
DIRECT FULFILLMENT, LLC'S MOTION TO CONTINUE TRIAL**

Plaintiff and intervenor-defendant ITV Direct, Inc. and intervenor-defendant Direct Fulfillment, LLC (collectively, "ITV" or "plaintiffs") move that the trial of this matter, presently scheduled for May 31, 2005, be continued to the next available date for this court.

As grounds for their motion, the plaintiffs state as follows:

1. The undersigned, who is lead counsel in this case, is presently scheduled to begin a jury trial on May 31, 2005 before Judge Winik of the Housing Court. In a pre-trial conference held last week, Judge Winik made it clear that the case would commence on that date and that no continuance would be granted. The undersigned has served as lead counsel in that case from its inception.

2. The intervenor in this case, Cappseals, has also stated its intention to call the undersigned as a witness in this case. While it is believed that this is simply a litigation tactic in an effort to deny the plaintiffs the right to the counsel of their choice, the notice of their intent to call the undersigned as a witness raises the issue of whether another attorney of this firm must

now be assigned to act as the lawyer for the plaintiffs during the trial under Rule 3.7(b) of the Massachusetts Rules of Professional Conduct.

3. There is also pending before this court the request of the defendant Healthy Solutions for some clarification of the actual issues to be tried before this court. There is no doubt that the plaintiffs and the defendants are uncertain as to the court's intention to try all of the claims in the case or only the claim of the intervenor. The parties are also seeking clarification as to their right to a jury trial on some of the issues in the case.

4. For all of these reasons, the plaintiffs believe that the trial of this matter should be continued and that a further pre-trial conference be held to resolve some of these outstanding issues.

ITV DIRECT, INC. and
DIRECT FULFILLMENT, LLC

By their attorney(s),

/s/ Peter S. Brooks
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